IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 798 OF 2005

Vitthal Pandurang Dalvi ... Appellant

V/s

Anant Tukaram Dalvi & ors. ... Respondents

Mr. G.J. Sabnis for the appellant.

Mr. A.S. Khandeparkar i/by M/s Khandeparkar & Associates for the respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 23RD AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Sindhudurga at Oros, dated 17.9.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Vengurla dated 16.12.1999 decreeing the suit for partition and separate possession of the suit property.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit against the defendants for partition and separate possession of their share in the suit property. The only bone of contention at this stage is in respect of one property out of several properties i.e. the land at Survey No.233 Hissa No.37. There is absolutely no dispute amongst the parties that all other suit properties are ancestral properties and the only dispute is in respect of this land. The 7/12 extracts of the 14 lands at Sr.Nos. 1 to 14 are on record which show name of the cultivator of the lands. Inspite of this fact, it is the contention of the appellant that land of Survey No. 233 Hissa No.37 is his self-acquired property, both the courts below have come to the conclusion that there is absolutely no evidence to show that the impugned property is self acquired property of the appellant and, as such, it is brought in hotch-potch and suit is decreed.

4. The learned counsel for the appellant vehemently urged that the burden casts upon the respondents to establish that the impugned land of Survey No.233 Hissa No.37 is not self-acquired property of the appellant but is part of the joint family property. In this respect, it must be noted that when the appellant-defendant No.1

came with the case that his name appears on the entire suit property consisting of 14 lands, question arises as to why the land of Survey No.233 of Hiss 37 should be adjudicated as defendants' self-acquired property and, therefore, under these peculiar circumstances, the burden would be definitely on the defendants to show that out of 14 lands which show the names of the defendants in the revenue record, only the impugned property is self-acquired property. The burden is definitely not discharged by the party who alleges that it is a self-acquired property and, as such, there is no doubt whatsoever that both the Courts below have rightly recorded concurrent findings to the effect that the impugned property is also a part and parcel of the joint family property. In view of this aspect, I am not inclined to interfere with the findings recorded by both the Courts below.

In the result, the appeal stands dismissed with no order as to costs. Consequently, Civil Application No. 1307 of 2005 also stands dismissed with no order as to costs.

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